

VOIP is under FCC jurisdiction

Haunting questions for broadband providers answered
Reprint from BPL Today

The FCC voted today to support a petition from VOIP firm Vonage declaring that VOIP services such as DigitalVoice, the service Vonage offers, aren't "subject to traditional state public utility regulation."

VOIP is a critical part of broadband's triple play of voice, video and data, and thus a critical part of any BPL system delivering or planning to deliver broadband to customers. FCC Chairman Michael Powell showed the connection between BPL and VOIP by making a VOIP call during his historic visit with FERC Chairman Pat Wood to the Manassas BPL deployment last month (BPL Today, 10/18). "Since 1870 home telephone service has been essentially the same -- two phones connected by a wire," said Powell in his statement today on the decision. "This landmark order recognizes that a revolution has occurred. Internet voice services have cracked the 19th Century mold to the great benefit of consumers." That VOIP lets two people talk is where its similarity to traditional telephone networks ends, he added. "Internet voice is an internet application that takes its place alongside email and instant messaging as an incredibly versatile tool for communicating with people all over the world. As such it has truly unique characteristics," noted Powell.

The regulatory clarity created by the commission's BPL order last month refocused the question to whether the states would look at VOIP's obvious connection to telephone service as a reason to require it to meet telecom regulations built up over a century. The costs of meeting those regulations could have soured the deal for potential BPL deployments, but with a vote FCC today settled the issue.

The question of whether VOIP would be regulated lightly as an information service or heavily as a telecom service has haunted VOIP firms since their products caught the attention of customers and regulators in recent years -- and worried broadband providers that offer or hope to offer voice service. That question "will be addressed in the commission's IP-Enabled Services Proceeding," noted an FCC release.

"This is a very big deal," communications consultant and BPL expert David Shpigler told us. "For a long time the folks that have been looking at BPL have been looking primarily at high-speed Internet access," he added. FCC is creating regulatory clarity for VOIP and is opening "the gates for other IP-based services to be offered over BPL networks," noted Shpigler. Minnesota was the first of several states including New York and Alabama that set out to regulate VOIP as a telecom service and the former regulation was largely held back by the courts, Shpigler explained. He expects some entity will test FCC's decision in the courts, but Shpigler doubts they would have any success and even if they did FCC has set the scene for any one of several Congressional moves to secure VOIP under federal jurisdiction (www.shpigler.com).

“This is a decisive vote of confidence in 21st century technology and consumer freedom,” wrote Larry Irving and Bruce Mehlman, co-chairs of the Internet Innovation Alliance (IIA). That group formed recently to push for a regulatory light touch to let VOIP grow. Today that wish seems to have come true. “The rapid, ongoing development of internet calling technology can give American businesses a clear edge in the global marketplace. “It can also provide better, less costly, more innovative services for millions of ordinary consumers. But all this will happen only if states and localities don't try to tie it down in regulation and taxation,” the two said today. “The FCC had a duty to step in and protect consumers from a confusing maze of old copper-wire phone regulations applied to the newest digital data networks. “This sends an unmistakable signal to consumers, investors, wary businesses and state regulators that America's global economic competitiveness will not bog down under the weight of state and local red tape.”

The IAA "believes that for America to realize broadband's revolutionary potential, federal and state officials must maintain regulatory and tax policies that encourage innovations made possible by mass-market broadband. “IIA members include several VoIP leaders, including AT&T, pulver.com, Covad, Comptel/ASCENT, CapNet and the Information Technology Assn of America plus Americans for Tax Reform and the American Conservative Union" (www.InternetInnovation.org).

Today's FCC decision would exempt “other types of IP-enabled services, such as those offered by cable companies, that have basic characteristics similar to DigitalVoice,” said a commission statement released earlier in the day. “The decision adds to the regulatory certainty the commission began building with orders adopted earlier this year regarding (VOIP) by making clear that this commission, not the state commissions, has the responsibility and obligation to decide whether certain regulations apply to IP-enabled services. “The Commission has the power to preempt state regulations that thwart or impede federal authority over interstate communications.”

The Vonage petition sought federal preemption of an order by the Minnesota PUC and the FCC "found that the company's DigitalVoice service cannot practically be separated into intrastate and interstate components, precluding dual state and federal regulatory regimes. “DigitalVoice customers can use their phones from a broadband connection anywhere in the world, making it difficult to determine whether a call is local, interstate or international in nature. The commission found that Minnesota's regulations were inconsistent with the FCC's "deregulatory policies and that preemption was consistent with federal law and policies intended to promote the continued development of the Internet, broadband and interactive services. “Divergent state rules, regulations and licensing requirements could impede the rollout of such services that benefit consumers by providing them with more choice, competition and innovation.” The FCC made “a strong statement that it will be the FCC” that deals with any regulatory questions about certification and subsidies for VOIP, an FCC official told BPL Today.

See Monday's issue of BPL Today for more perspective from industry leaders on today's landmark decision.